

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

Crl.MC.No. 1087 of 2007()

CC.84/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II(MOBILE),ALAPPUZHA

PETITIONER: ACCUSED 1 AND 3 TO 5

1. NCJ RAJAN,
EXECUTIVE DIRECTOR, N.C.JOHN & CO.,
P.O.BOX NO.17, ALAPPUZHA-1.
2. JOHN NEROTH,
DIRECTOR, N.C.JOHN & CO., P.O.BOX NO.17,
ALAPPUZHA-1.
3. JOHN MATHEW,
DIRECTOR, N.C.JOHN & CO., P.O.BOX NO.17,
ALAPPUZHA-1.
4. JOHN CHACKO,
DIRECTOR, N.C.JOHN & CO., P.O.BOX NO.17,
ALAPPUZHA-1.

BY ADV. SRI.ROY CHACKO

RESPONDENTS: COMPLAINANTS 1 & 2 AND ACCUSED 2 & 6
& STATE OF KERALA

1. P.K.KUMUDINI, D/O. LATE KRISHNAN
VAIDYAN, RESIDING AT RWACHA HOUSE,
THUMBOLI P.O., ALAPPUZHA.
2. FRANCIS JOB NEROTH,
DIRECTOR & EXECUTIVE OFFICER, N.C.JOHN & CO.,
P.O.BOX NO.17, ALAPPUZHA-1.
3. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM

BY ADV. SRI.C.V.MANUVILSAN
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1087 of 2007

Dated this the 8th day of June 2007

O R D E R

The petitioners are accused 1 and 3 to 5 in a prosecution under the provisions of 'The Water (Prevention and Control of Pollution) Act, 1974. It is alleged that they are directors of a company. The crux of the allegation is that the said company had committed offence of water pollution punishable under the Act in the locality in which it is working. The petitioners have come before this court with a prayer that the prosecution against them may be quashed invoking the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C.

2. What are the reasons? The learned counsel for the petitioner has identified five specific reasons on the basis of which he claims quashing of proceedings. First of all, it is contended that no notice under Section 49 of the Act has been issued to the Pollution Control Board by the first respondent/complainant before launching this prosecution. After discussions at the bar, this point is not seriously pressed. It is evident that this contention is not available to the petitioners in as much as there is specific averment in the complaint and Ext.P1 document

marked in the course of the sworn statement of complainant to show that notice under Section 49 of the Act had been issued to the Pollution Control Board before the complainant embarked on this prosecution.

3. The second contention raised is that the complaint is not maintainable in as much crucial averments to implicate the petitioners are not there in the complaint. Section 47(1) reads as follows:

47.Offences by companies- (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge for that he exercised all due diligence to prevent the commission of such offence.

(emphasis supplied)

4. The relevant averment against the accused persons on this aspect appears in paragraph 3 of the complaint which also I extract below:

“It is respectfully submitted that, 50 meters away from the residence of the complainant, there is a

Coir Factory in the name and style of M/s.N.C.John & Co (herein after referred as the Company in short), owned by the accused herein. The accused are the directors of the said company who are solely responsible for any crime committed by the company."

(emphasis supplied)

5. The learned counsel for the petitioner relies on various decisions on this aspect by courts culminating in the decision in SMS Pharmaceuticals Ltd. vs. Neeta Bhalla [2005(8) SCC 89] that was a decision rendered in relation to a prosecution under Section 138 read with Section 141 of the Negotiable Instruments Act. In the said decision, it has been held clearly and unambiguously that unless the requisite averments attracting culpability so far as the directors are concerned are made specifically in the complaint, cognizance should not be taken against such accused directors. It is unnecessary to advert to precedents earlier in SMS Pharmaceuticals Ltd. vs. Neeta Bhalla [2005(8) SCC 89]. After considering the entire law on the point, it has been held unambiguously that the requisite averments must be there in order to attract the culpable liability for the directors.

6. That position of law is therefore well settled. The learned counsel for the complainant makes an attempt to contend that SMS Pharmaceuticals Ltd. vs. Neeta Bhalla [2005 (8) SCC 89] is applicable only to a prosecution like the one under Section 138 of the Negotiable Instruments Act where the offence alleged is comparatively insignificant and light and such an interpretation regarding the requirement of pleadings cannot be blindly imported into prosecution for a very serious offence like the one under the pollution laws. The offence alleged committed by the petitioners in this case affects posterity and therefore the principles of interpretation under Section 141 of the N.I.Act cannot be blindly imported. That contention may, of course, require serious consideration but cannot of course be readily accepted.

7. The learned counsel for the complainant then contends that it is not the law that the words of the statute must be repeated and reiterated in the complaint. The core of the issue is whether the requisite allegations have been raised against the accused who are directors of the company. Paragraph 3 extracted above, according to me, sufficiently notifies the accused persons of the nature of the allegations that

are raised against them. That they are solely responsible for the crime committed by the company is specifically and effectively narrated and communicated. The requirement of pleadings whether it be civil law or criminal law is that the adversary must be notified of the case on his opponent. The requirements of pleadings is not certainly an empty formality. This has its foundation in the principles of natural justice which demand that no persons must be condemned without being heard. Opportunity for being heard effectively includes the right to be notified of the allegations that he has to meet. Language of the statute need not be ritualistically repeated. It is sufficient if such averments are there which would effectively and cogently convey to the indictees the case which they have to meet. Materials and evidence in support of such pleadings will come only later. In this view of the matter, I am of the opinion that it may not be appropriate or proper to throw the prosecution out at the threshold invoking the extraordinary inherent jurisdiction on the ground that the averments in paragraph 3 extracted above are not succinct, sufficient and specific - that they do not repeat crucial and key words of the statute in Section 47(1) of the Act. This is not to say that I am totally satisfied with the nature of

pleadings. But the inadequacy of the pleadings must be realistically considered and undeserved benefit cannot be conferred on an inditree and he cannot be spared of the liability to face the trial only on such reason. Significantly, this is not a case where there are no averments at all. The averments in paragraph 3 extracted above indicate clearly that the accused are directors of the company and they are solely responsible for the acts of the company - that is the crime committed by the company. In these circumstances, I am certainly of the opinion that the trial must proceed and the court must wait for the evidence which is likely to be adduced, the core having been stated in paragraph 3 extracted above. The second contention raised cannot in these circumstances, justify this court invoking the powers under Section 482 Cr.P.C.

8. The third contention raised is that there are no relevant averments which can attract culpability under Section 47(2) of the Act. I agree with the learned counsel for the petitioner on this aspect. There is no contention that any consent or connivance was there on the part of the petitioners which resulted in the commission of the offence nor does the complainant have a specific case - it is evident on going through

the pleadings, that the petitioners are liable under Section 47(2) of the Act. The contention raised under Section 47(2) of the Act is therefore entitled to succeed but such success is irrelevant in view of the answer already given to contention No.2 referred above. Further, it is apposite to note that accused No.1 is alleged to be executive director and sixth accused is executive officer/alleged director as status. What the expression executive director and executive officer means will certainly have to be amplified in evidence by the complainant.

9. Fourthly it is contended that subsequent to the alleged act of pollution in this case, writ petition has been filed by the complainant along with another before the High court to ensure that the factory is closed down and does not continue to perpetuate the alleged pollution. Subsequently, commissions have been taken out in the court. These, according to me, are absolutely irrelevant in as much as the precise offence alleged has been committed in respect of period prior to the filing of the writ petition. I am not, in these circumstances, referring to the various materials that have been introduced in evidence, in the course of the writ petition. Significantly, there is no contention that the allegation made in the petition do not reveal the

commission of an offence under the Act by the company during the relevant period - i.e the period prior to the filing of the writ petition.

10. Fifthly and lastly it is contended that the Pollution Control Board has subsequently duly licensed the petitioner's company. The subsequent establishment of appropriate pollution plants and abatement of nuisance of pollution cannot certainly have the effect of obliterating or effacing the offence, if any already committed. In view of that also, the subsequent granting of licence by the Pollution Control Board cannot, in any way deliver any advantage to the petitioners.

11. No other contentions are raised. I am, in these circumstances, of the opinion that no circumstances have been brought out which would justify premature termination of the proceedings against the petitioners by invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C. It is unnecessary to advert to precedents which have been cited copiously at the Bar on this aspect. Suffice it to say that the jurisdiction which I am called upon to invoke and exercise is an extraordinary inherent jurisdiction which cannot be invoked as a matter of course and which ought to be invoked only sparingly

and in exceptional cases - in the rarest of rare cases as held in Kurukshetra University vs. State of Haryana [AIR 1977 SC 2229]. I am of the opinion that the materials available in this case [considering the nature of allegations, the gravity of the allegations and the precise conduct alleged as revealed from the circumstances] this is not a fit case where such a jurisdiction can and ought to be invoked. I must, however, hasten to observe that I have not intended to finally conclude any disputed question of fact or law and I have only chosen to hold that powers under Section 482 Cr.P.C need not be invoked at this stage and with the present materials.

12. This Criminal Miscellaneous Case is accordingly dismissed with the above observations.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007